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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,128	07/17/2006	Dominique Quesseleire	09669/092001	1798
22511	7590	05/13/2009		
OSHA LIANG L.L.P. TWO HOUSTON CENTER 909 FANNIN, SUITE 3500 HOUSTON, TX 77010			EXAMINER COPPOLA, JACOB C	
			ART UNIT 3621	PAPER NUMBER
			NOTIFICATION DATE 05/13/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/586,128

Applicant(s)

QUESSELAIRE ET AL.

Examiner

JACOB C. COPPOLA

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgements

1. This action is in reply to the ‘Amendments to the Claims’ and ‘Remarks’ filed on 02 February 2009 (“09 Feb Amendments” and “09 Feb Remarks,” respectively).
2. Claims 1-18 are currently pending and have been examined.
3. This Office Action is given Paper No. 20090507. This Paper No. is for reference purposes only.

Claim Rejections - 35 USC § 112, 2nd Paragraph

4. The following is a quotation of the second paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-18 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Regarding Claims 1-18

6. These claims recite “while the customers are within the physical vicinity of the merchant.” These claims are indefinite because one of ordinary skill in the art would not understand the metes and bounds of the phrase “within the physical vicinity of the merchant” as used within the context of these claims. The meaning of “within the physical vicinity” is unclear. For example, how close does a customer have to be to the merchant to be “within the

physical vicinity of the merchant”? If the customer is within three feet of the merchant, is the customer “within the physical vicinity of the merchant”? If the customer is within 1 mile of the merchant, is the customer “within the physical vicinity of the merchant”? The appropriate distance cannot be determined.

Regarding Claims 1-4

7. These claims are indefinite because it is unclear to one of ordinary skill in the art whether Applicants are claiming the subcombination of a “human interface module,” “hosting means,” and “gateway means” or the combination of a “human interface module,” “hosting means,” “gateway means,” “merchant,” and “plurality of customers.”

8. If it is Applicants’ intent to claim only the subcombination, the body of the claims must be amended to remove any positive recitation of the combination. If it is Applicants’ intent to claim the combination, the preamble of the claim must be amended to be consistent with the language in the body of the claim.

Regarding Claims 5-18

9. These claims are indefinite because it is unclear to one of ordinary skill in the art whether Applicants are claiming the subcombination of a “transaction terminal” or the combination of a “transaction terminal,” “merchant,” and “plurality of customers.”

10. If it is Applicants’ intent to claim only the subcombination, the body of the claims must be amended to remove any positive recitation of the combination. If it is Applicants’ intent to

claim the combination, the preamble of the claim must be amended to be consistent with the language in the body of the claim.

11. The Examiner finds that because the claims are indefinite under 35 U.S.C. §112, 2nd paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claims are indefinite, the claims are construed and the prior art is applied as much as practically possible.

Claim Rejections - 35 USC § 101

12. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 1-18 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Regarding Claims 1-18

14. These claims recite "a merchant" and "a plurality of customers." However, under the broadest reasonable interpretation, "a merchant" and "a plurality of customers" may be interpreted as human beings (see definitions below). Because the claim as a whole encompasses human beings, the claims are not within one of the four statutory classes of invention. See MPEP §2105.

15. It is the Examiner's principle position that the claim limitation "wherein the transaction terminal is used for transactions between a merchant and a plurality of customers while the customers are within the physical vicinity of the merchant" (claims 1, 5, and 13) does not positively set forth "a merchant" or "a plurality of customers" (see section titled "Claim Interpretation," below). However, Applicants have argued that the limitation above should be given patentable weight (p. 9, 09 Feb Remarks). Therefore, Applicants are arguing that the elements of this limitation are positively set forth, namely "a merchant" and "a plurality of customers." While the Examiner respectfully disagrees with this position (see section titled "Response to Arguments," below), a reviewing body may agree with Applicants and find that both claim elements of "a merchant" and "a plurality of customers" are positively set forth. In light of this possibility, this rejection under 35 U.S.C. §101 applies.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 1, 2, 4, 5, 7, 9, 10, 12, and 13-17, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Goldthwaite et al. (U.S. 2004/0019564 A1) ("Goldthwaite"), in view of Inotay et al. (W.O. 03/067530 A2) ("Inotay").

Regarding Claims 1, 5, 9, 13-15

18. Goldthwaite discloses a human interface module (“mobile phone 110”) comprising a keypad, a display, a card reader, a first processing means (“CPU 202”) and an internal bus for connecting the keypad, the display, the card reader and the first processing means, wherein the human interface module is located in a transaction terminal (figs. 3 and 5 with associated text, Goldthwaite’s human interface module is a transaction terminal); a hosting means (“mobile phone 110”) connectable to the human interface module through connection means, said hosting means comprising a memory, a communication means, and a power supply (§ 0044); and a gateway means (“merchant server 104”) connectable to the hosting means through a telecommunication network (“Internet”) (fig. 2c with associated text).

19. Goldthwaite does not specifically disclose said hosting means comprising a scheduler means and a second processing means; and said gateway means being a virtual terminal server.

20. Inotay, however, teaches said hosting means comprising a scheduler means (“payment utility”) and a second processing means (“a control unit”) (see at least the abstract and page 2, ¶ 3); and said gateway means being a virtual terminal server (see at least the abstract).

21. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the mobile phone with SIM of Goldthwaite the scheduler means and second processing means as taught by Inotay since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

22. Additionally, since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself – that is in the substitution of the virtual terminal server of Inotay for the merchant server of Goldthwaite. Thus, the simple substitution of one known element for another, producing predictable results, renders the claim obvious.

Regarding Claims 2, 10, and 16

23. The combination of Goldthwaite and Inotay discloses the limitations of claims 1, 9, and 14, as described above. The combination of Goldthwaite and Inotay, further, discloses wherein a transaction service provider (“financial institution server **112**”) host is connectable to the gateway means (Goldthwaite, fig. 2c with associated text).

Regarding Claims 4, 7, 12, and 17

24. The combination of Goldthwaite and Inotay discloses the limitations of claims 1, 2, 5, and 14, as described above. The combination of Goldthwaite and Inotay, further, discloses a gateway means (“merchant server **104**”), and a security module for performing secure communication with the hosting means (fig. 7 with associated text).

25. Although Goldthwaite does not specifically disclose wherein the gateway means comprises a security module for performing secure communication with the hosting means, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the gateway means of Goldthwaite the security module as taught by Goldthwaite

since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

26. Claims 1, 2, 4, 5, 7, 9, 10, 12, and 13-17, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Goldthwaite et al. (U.S. 2004/0019564 A1) (“Goldthwaite”), in view of Inotay et al. (W.O. 03/067530 A2) (“Inotay”), and in further view of Official Notice.

27. It is the Examiner’s principle position that the claim limitation “wherein the transaction terminal is used for transactions between a merchant and a plurality of customers while the customers are within the physical vicinity of the merchant” (claims 1, 5, and 13) does not distinguish the claimed invention from the prior art (see section titled “Claim Interpretation,” below). However, if a reviewing body were to determine that the above limitation does distinguish the claimed invention from the prior art, the Examiner relies on the rejection below.

Regarding Claims 1, 5, 9, 13-15

28. Goldthwaite discloses a human interface module (“mobile phone 110”) comprising a keypad, a display, a card reader, a first processing means (“CPU 202”) and an internal bus for connecting the keypad, the display, the card reader and the first processing means, wherein the human interface module is located in a transaction terminal (figs. 3 and 5 with associated text, Goldthwaite’s human interface module is a transaction terminal); a hosting means (“mobile

phone 110”) connectable to the human interface module through connection means, said hosting means comprising a memory, a communication means, and a power supply (§ 0044); and a gateway means (“merchant server 104”) connectable to the hosting means through a telecommunication network (“Internet”) (fig. 2c with associated text).

29. Goldthwaite does not specifically disclose said hosting means comprising a scheduler means and a second processing means; said gateway means being a virtual terminal server; and wherein the transaction terminal is used for transactions between a merchant and a plurality of customers while the customers are within the physical vicinity of the merchant.

30. Inotay, however, teaches said hosting means comprising a scheduler means (“payment utility”) and a second processing means (“a control unit”) (see at least the abstract and page 2, ¶ 3); and said gateway means being a virtual terminal server (see at least the abstract).

31. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the mobile phone with SIM of Goldthwaite the scheduler means and second processing means as taught by Inotay since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

32. Additionally, since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself – that is in the substitution of the virtual terminal server of Inotay for the merchant server of

Goldthwaite. Thus, the simple substitution of one known element for another, producing predictable results, renders the claim obvious.

33. Additionally, the Examiner takes Official Notice that transaction terminals used for transactions between a merchant and a plurality of customers while the customers are within the physical vicinity of the merchant are old and well-known in the art because they are used at merchant sites to sell products to customers.

34. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to program the functionality of Goldthwaite's terminal into an old and well-known transaction terminal that is used for transactions between a merchant and a plurality of customers while the customers are within the physical vicinity of the merchant. One would have been motivated to do so because this would alleviate the need for a customer using Goldthwaite's terminal from having to carry the terminal on his/her person.

Regarding Claims 2, 10, and 16

35. The combination of Goldthwaite, Inotay, and Official Notice discloses the limitations of claims 1, 9, and 14, as described above. The combination of Goldthwaite, Inotay, and Official Notice, further, discloses wherein a transaction service provider ("financial institution server 112") host is connectable to the gateway means (Goldthwaite, fig. 2c with associated text).

Regarding Claims 4, 7, 12, and 17

36. The combination of Goldthwaite, Inotay, and Official Notice discloses the limitations of claims 1, 2, 5, and 14, as described above. The combination of Goldthwaite, Inotay, and Official

Notice, further, discloses a gateway means ("merchant server 104"), and a security module for performing secure communication with the hosting means (fig. 7 with associated text).

37. Although Goldthwaite does not specifically disclose wherein the gateway means comprises a security module for performing secure communication with the hosting means, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the gateway means of Goldthwaite the security module as taught by Goldthwaite since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

38. Claims 3, 6, 8, 11, and 18, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Goldthwaite and Inotay, in further view of Buhler et al. (U.S. 2004/0012620 A1) ("Buhler").

Regarding Claims 3, 6, 11, and 18

39. The combination of Goldthwaite and Inotay discloses the limitations of claims 1, 2, and 9, as described above. The combination of Goldthwaite and Inotay does not specifically disclose wherein the human interface module further comprises a printer.

40. Buhler, however, teaches wherein a human interface module further comprises a printer (¶ 0020).

41. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include with the human interface module of Goldthwaite the printer as taught by Buhler since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 8

42. The combination of Goldthwaite, Inotay, and Buhler discloses the limitations of claim 3, as described above. The combination of Goldthwaite, Inotay, and Buhler, further, discloses a gateway means ("merchant server 104"), and a security module for performing secure communication with the hosting means (fig. 7 with associated text).

43. Although Goldthwaite does not specifically disclose wherein the gateway means comprises a security module for performing secure communication with the hosting means, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the gateway means of Goldthwaite the security module as taught by Goldthwaite since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

44. Claims 3, 6, 8, 11, and 18, as understood by the Examiner, are alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Goldthwaite, Inotay, and Official Notice, in further view of Buhler et al. (U.S. 2004/0012620 A1) ("Buhler").

45. It is the Examiner's principle position that the claim limitation "wherein the transaction terminal is used for transactions between a merchant and a plurality of customers while the customers are within the physical vicinity of the merchant" (claims 1, 5, and 13) does not distinguish the claimed invention from the prior art (see section titled "Claim Interpretation," below). However, if a reviewing body were to determine that the above limitation does distinguish the claimed invention from the prior art, the Examiner relies on the rejection below.

Regarding Claims 3, 6, 11, and 18

46. The combination of Goldthwaite, Inotay, and Official Notice discloses the limitations of claims 1, 2, and 9, as described above. The combination of Goldthwaite, Inotay, and Official Notice does not specifically disclose wherein the human interface module further comprises a printer.

47. Buhler, however, teaches wherein a human interface module further comprises a printer (§¶ 0020).

48. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include with the human interface module of Goldthwaite the printer as taught by Buhler since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately,

and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 8

49. The combination of Goldthwaite, Inotay, Official Notice, and Buhler discloses the limitations of claim 3, as described above. The combination of Goldthwaite, Inotay, Official Notice, and Buhler, further, discloses a gateway means ("merchant server 104"), and a security module for performing secure communication with the hosting means (fig. 7 with associated text).

50. Although Goldthwaite does not specifically disclose wherein the gateway means comprises a security module for performing secure communication with the hosting means, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the gateway means of Goldthwaite the security module as taught by Goldthwaite since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Application of the Prior Art

51. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations

within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Claim Interpretation

52. After careful review of the original specification, the Examiner is unable to locate any lexicographic definitions with the required clarity, deliberateness, and precision.

53. The Examiner finds that because the examined claims recite neither “step for” nor “means for,” the examined claims fail Prong (A) as set forth in MPEP §2181 I. Because the examined claims fail Prong (A) as set forth in MPEP §2181 I., the Examiner concludes that all examined claims do not invoke 35 U.S.C. §112, 6th paragraph. See also *Ex parte Miyazaki*, 89 USPQ2d 1207, 1215-16 (B.P.A.I. 2008)(precedential).

54. With respect to the limitation “wherein the transaction terminal is used for transactions between a merchant and a plurality of customers while the customers are within the physical vicinity of the merchant” (claims 1, 5, and 13). This limitation does not positively set forth any additional structure for the “system” of claim 1 or for the “transaction terminal” of claims 5 and 13. In particular, this limitation does not positively set forth “a merchant” or “a plurality of customers.” This limitation merely states the intended use of the terminal. The intended use of a claimed structure will not distinguish the claimed structure from the prior art. See MPEP §2114.

55. The Examiner interprets connectable to mean ‘able to be connected.’ Applicants are reminded that “[a]s a matter of linguistic precision, optional elements do not narrow the claim

because they can always be omitted.” *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006)(where the Federal Circuit affirmed the Board’s claim construction of “further including that said wall may be smooth, corrugated, or profiled with increased dimensional proportions as pipe size is increased” as non-limiting since “this additional content did not narrow the scope of the claim because these limitations are stated in the permissive form ‘may.’”). See also *e.g.* MPEP §2106 II C.: which states, “Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.” (emphasis in original). In this application the Examiner interprets the claim limitation “connectable” to be analogous to “may be connected” (*e.g.* claim 1 recites “a hosting means connectable to the human interface”).

56. The Examiner hereby adopts the following definitions under the broadest reasonable interpretation standard. In accordance with *In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997), the Examiner points to these other sources to support his interpretation of the claims.¹ Additionally, these definitions are only a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language. Finally, the following list is not intended to be exhaustive in any way:

- a. *customer* “1. One that buys goods or services.” The American Heritage® Dictionary of the English Language, 4th ed. Boston: Houghton Mifflin, 2000;
- b. *for* “1 a – used as a function word to indicate purpose.” Webster’s Ninth New Collegiate Dictionary, Merriam-Webster, Inc., Springfield, MA, 1986;

¹ While most definition(s) are cited because these terms are found in the claims, the Examiner may have provided additional definition(s) to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

- c. **merchant** “1. One whose occupation is the wholesale purchase and retail sale of goods for profit.” The American Heritage® Dictionary of the English Language, 4th ed. Boston: Houghton Mifflin, 2000; and
- d. **module** “1. In programming, a collection of routines and data structures that performs a particular task or implements a particular abstract data type.” Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.

Response to Arguments

57. Applicants’ 09 Feb Remarks have been fully considered but they are not persuasive.

35 U.S.C. §112, Sixth Paragraph

58. Applicants argue “The ‘means’ language in the claims of the present application invokes 35 U.S.C. § 112, sixth paragraph. Accordingly, Applicants respectfully request that the Examiner interpret the claims under 35 U.S.C. § 112, sixth paragraph.” (p. 5, 09 Feb Remarks). The Examiner respectfully disagrees, and therefore Applicants’ request is respectfully denied. See discussion above in the section titled “Claim Interpretation.”

Prior Art

59. Applicants argue “Goldthwaite and Inotay fail to teach or suggest a transaction terminal that is used for transactions between a merchant and the merchant’s customers while the customers are within the physical vicinity of the merchant.” (p. 7, 09 Feb Remarks). Applicants

are reminded that the intended use of a structure does not distinguish the claimed structure from the prior art. See discussion above in the section titled “Claim Interpretation.”

60. Applicants argue “the customer’s mobile phone, which the Examiner improperly equates to a transaction terminal...” (p. 7, 09 Feb Remarks). The Examiner respectfully disagrees. First, Applicants have not stated *why* this equation is improper. Second, one of ordinary skill in the art would interpret a mobile phone, in its broadest reasonable interpretation, to be a type of “transaction terminal.”

Conclusion

61. Applicants’ 09 Feb Amendments necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant(s) is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

62. Because this application is now final, Applicants are reminded of the USPTO’s after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. “The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion.” *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is “allowed,” exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (*e.g.* §101 patentable subject matter, §112, 1st paragraph written

description and enablement, §112, 2nd paragraph indefiniteness, and §102 and §103, prior art).

Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

63. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

64. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Jacob C. Coppola whose telephone number is (571) 270-3922. The Examiner can normally be reached on Monday-Friday, 9:00 a.m. - 5:00 p.m. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached at (571) 272-6779.

65. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

PAIR system, please contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/JACOB C. COPPOLA/

Patent Examiner, Art Unit 3621

May 7, 2009

/ANDREW J. FISCHER/

Supervisory Patent Examiner, Art Unit 3621